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REVIEW OF RECENT ACTIVITIES TO ELIMINATE LAY ENCROACHMENTS

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IN the past the legal profession has given little attention to the encroachment of corporations and laymen upon the practice of law. However, the continued and rapidly increasing encroachment has caused considerable activity in the last several years. Many proceedings have been instituted in the courts over the country to check and prevent the same. I desire, however, in this presentation to review the activities to eliminate the encroachments of Collection Agencies and Credit Associations.

In presenting the same I will first trace the development of the Collection Agency. The earliest encroachment upon the practice of law was made by the Collection Agency, yet the Collection Agency is of comparatively recent development.

Bradstreet Co. and R. G. Dun & Co., the two national mercantile agencies, were organized between 1842 and 1848. The former never entered the collection field but the latter in 1851 established a collection agency service for the use of its own subscribers. For a period of approximately twenty years few competitors appeared in the collection field.

About 1870, "Attorneys Lists" came into existence. They were originally simply lists of attorneys that handled collections and were sold outright. However, it was only a short time until the publishers of the lists found that it was a source of considerable profit to take the collections direct, although the original subscription fee was included in the contract for this service. The development of the Attorney's Lists was rapid until today there are over one hundred lists on the market.

The foregoing were for many years the only sources through which slow collections could be made. About 1888 an individual in Chicago conceived the idea of establishing an agency for the purpose of recovering that class of claims which the mediums then in the field failed to reach. His

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original plan consisted in selling to merchants throughout the country a system of form letters calculated to frighten the debtors into a settlement. The fame of this system spread rapidly. However, he soon changed the system and sent out the letters himself. In this way a larger profit was possible. The methods resorted to through the mails became gradually more offensive until a storm of protests rendered interference by the postal authorities imperative. Finally, almost every objectionable feature of the system was absolutely prohibited. Inventive genius, however, was not lacking. The result was the bad debt collector. Burly, uniformed collectors were used. In many cities funeral equipages, with collection agency signs, called regularly on obstinate cases. Enraged victims reduced many of these Black Marias to kindling wood.

The evils of this method soon resulted in as wide a protest as the mail system precipitated. Civil suits were instituted and pressed vigorously. In the end many of the blackmail practices were eliminated.

The present day Collection Agency continues to use the personal solicitation and letter writing system. However, its activities consist largely of the institution of suit to enforce collection of the accounts. In the event that one or two letters fail to bring results it threatens to institute suit. Suit is then instituted by the Collection Agency and judgment secured.

Today, practically the entire collection business of the country is controlled by the Collection Agencies, Credit Associations and Law Lists. This business has passed into their hands because they can advertise for and solicit it. In addition, the Credit Associations solicit claims in Bankruptcy from creditors. These claims are handled by their salaried lawyers and the fees that are received are used to support the other activities of the Associations. The Law Lists furnish an opportunity for the subscriber to advertise and solicit business. The basic weakness, however, is the fact that representation in the list is sold to the lawyer. Such lists should be supported, not by the lawyer, but by the creditor. In this way the publisher would be able to select only lawyers who are thoroughly qualified.

During the past two years there has been considerable litigation in the State of Ohio. At Cleveland petitions for

injunction have been filed in the Court of Common Pleas of Cuyahoga County against thirty corporations. These corporations include Automobile Associations, Credit Men's Association, Property Owners' Associations, Title Companies and Trust Companies. Similar proceedings have been brought in the courts at Cincinnati, Columbus, Steubenville and Toledo. All of the proceedings were instituted by individual attorneys with the exception of the case of United Mercantile Agency v. Robert B. Lybarger, 28 Nisi Prius, New Series, 319, in the Municipal Court of Columbus. In this case the agency brought suit to recover a fee in a case in which it had instituted suit for a client. The Court held that it could not recover because it was engaged in the practice of law.

The most outstanding case is Dworken v. Apartment House Owners' Association of Cleveland, 38 Ohio Appellate 265, 176 North Eastern 577, which was decided by the Court of Appeals of Cuyahoga County on March 9, 1931. In this case the defendant maintained a legal department and employed lawyers to furnish legal services to its members. Such services included the collection of accounts and the institution of suit to enforce payment of the same. It also handled forcible entry and detainer cases. The trial Court held that the defendant was engaged in the practice of law and granted the injunction. The Court of Appeals entered judgment for the plaintiff. Thereafter, the defendant filed a motion in the Supreme Court for an order directing the Court of Appeals to certify its record. On June 10, 1931, the Supreme Court denied this motion.

In Dworken v. The Cleveland Retail Credit Men's Company, the Court of Common Pleas enjoined the defendant from advertising that it maintained or conducted a legal department for the benefit of its members, from soliciting memberships under any agreement whereby it agreed to furnish legal services or advice, from maintaining a legal department for any purpose other than to handle the immediate affairs pertaining to the corporate entity, from filing prosecuting or defending, through itself or attorneys any actions or suits on behalf of another and from furnishing legal counsel or advice to its members or others. It was further set forth in the decree that nothing therein should be construed to prevent the de-

fendant from conducting a department for the collection of accounts, notes, contracts or other commercial obligations for its members if its services were limited to presenting claims for payments and remitting collections if received upon demand or presentment, or by handling without rendering any services requiring professional legal skill or the application of law to the facts.

At Toledo petitions for injunction have been filed in the Court of Common Pleas of Lucas County against the Merchants Credit and Adjustment Company, The Buckeye Mercantile Agency, and The Toledo Association of Credit Men. The petitions alleged in part that the defendants operated collection agencies for the collection of claims, debts and demands for the public generally and contracted with merchants and others to collect claims, debts and demands owing to them, for a valuable consideration. It was further alleged that the defendants attempted to collect and did collect for a valuable consideration, debts, claims and demands, belonging to persons and other corporations by threatening the debtors of such persons or corporations that if they would not pay the same the defendants would bring or cause to be brought, legal action against said debtors to enforce the payment thereof. The defendants in the first two proceedings filed motions to strike these allegations from the petitions on the ground that they were immaterial and irrelevant and that the facts did not constitute the practice of law. Judge Charles M. Milroy, on July 9, 1931, overruled the motions, thereby holding that such allegations constituted the practice of law.

The Buckeye Mercantile Agency case was heard by Judge Stuart in May of this year. I understand that he submitted the case to all of the Judges of the Court of Common Pleas of Lucas County. A decision has not yet been announced.

In Blake v. Ohio Bureau of Credits, which was decided by the Court of Common Pleas of Franklin County, Ohio, on February 19, 1932, the Court said that the preparation of the necessary papers, filing and conducting suits, and endeavoring to enforce judgments by proceedings in aid of execution constitute the practice of law.

The Court further said that being precluded from either directly or indirectly bringing and prosecuting legal proceed-

ings to enforce collections, the defendant had no right to threaten that it would institute legal proceedings and it would be enjoined from so doing. It would further be enjoined from sending either by mail or otherwise, to a debtor any paper or document simulating or intended to simulate a legal document for the purpose of enforcing a collection. The Court allowed a permanent injunction which in addition to the above enjoined the defendant from maintaining a legal department for the benefit of others. (4 Ohio Bar 613).

In re Scott, 52 Federal (2d) 89, was decided by the United States District Court for the Western District of Michigan, on October 2, 1931. In this case the Grand Rapids Credit Men's Association solicited claims in bankruptcy suits. The proof of claim authorized the Association to attend all meetings of creditors and to vote in the election of trustee. The Referee refused to approve the selection of the Trustee made by the Association. The Court said that the power of Attorney included the power to vote for or against any proposed resolution in reference to the estate, in the choice of trustee, to accept or refuse any composition, and do such acts as fully as the creditor could if personally present. It further said that the examination of the bankrupt and the participation in the election of a trustee by others than the creditor himself was the practice of law as generally understood and had been so recognized by the courts, citing In re Looney, 262 Federal 209, and In re H. E. Ploof Machinery Co., 243 Federal 421.

Public Service Traffic Bureau, Inc. vs. Haworth Marble Co., 40 Ohio Appellate 255, 178 North Eastern 703, was decided by the Court of Appeals of Cuyahoga County on November 2, 1931. In this case the plaintiff instituted suit in the Municipal Court of Cleveland to recover compensation for services rendered under a contract. By this contract the plaintiff had agreed to examine and analyze freight bills for the previous three years and to prepare, file, prosecute and adjust all claims developed on such bills, as well as to take the necessary procedure to effect all possible rate and classification reductions on defendant's shipments. The bills were examined and the plaintiff filed claims before the Interstate Commerce Commission and appeared before it.

The Court recognized in its opinion that the Interstate Commerce Commission was created by an Act of Congress and was given authority to adopt rules of practice. In this connection the Commission had adopted a rule allowing any person who was possessed of satisfactory legal and technical qualifications to appear before it. The Court said that practice before the Interstate Commerce Commission, Commissioner of Patents, Treasury Department and United States Board of Tax Appeals was not limited to lawyers.

The Court further said that the collection of claims without resort to courts at law does not constitute the practice of law. However, this suit was based upon a contract which by its terms contemplated the prosecution of claims before a Court of Justice and this would render the contract void. Therefore, the Court held that the use of the words "to prosecute" without limiting them to activities other than the institution of proceedings before a Court, made the petition subject to demurrer and affirmed the judgment of the trial Court.

State of Tennessee ex rel. v. Retail Credit Men's Association of Chattanooga, 163 Tennessee 450, 43 South Western (2d) 918, was decided by the Supreme Court of Tennessee on December 5, 1931. In this case the defendant operated a Collection department. It solicited claims for collection with the understanding with its clients that suit would be instituted by it and collection enforced by legal process. It also employed an attorney to bring suits on claims placed with it for collection. The Chancellor declined to vacate its charter but granted an injunction which enjoined these practices. The Court of Appeals affirmed the decree. It was also affirmed by the Supreme Court. However, the Supreme Court held that the defendant was not practicing law in making reports to its members as to the title to real estate.

In State Bar of Oklahoma v. Retail Merchants Association of Enid, the District Court on April 13, 1932, enjoined the defendant from soliciting, or advertising for or holding itself out as being engaged in the collection of debts, claims and demands through the courts, from threatening debtors by sending to them "Notice of Impending Suit", or any other similar threat, or to threaten them with any action by the Court, or from filing any suits, or from collecting any attor-

ney fee on any claims placed with it for collection, or from rendering any legal advice, or holding itself out to the public as maintaining a legal department, or from employing an attorney to institute suits for it on any debt, claim or demand held by it for collection, or from taking any part of any fee allowed to any attorney in the collection of any such debts, provided that the defendant should be allowed to operate a collection agency for the collection of the debts of its members, however, to be limited to the solicitation of such debts against third persons and to presenting said debts for payment without however, rendering or attempting to render services requiring professional legal skill or knowledge.

The General Assembly of Virginia in 1924 passed an act which provided that it should be unlawful for any person, firm or corporation not being an attorney duly authorized to practice in Virginia, to present the claim or cause of any other person, firm or corporation before any Magistrate, Civil or Police Justice, Civil Justice Court or any other Court unless said person, firm or corporation so appearing has a property interest in said claim or cause, and that it should be unlawful for any firm, person, or corporation to assign to any other person, any claim or cause or any interest in any claim or cause, for the purpose of having the said claim or cause, or any interest therein represented before any Court by any person, firm or corporation, not an attorney. It further provided that nothing in the act should be construed to prevent any person, firm or corporation from representing his or their claim, or from preventing any person, firm or corporation from having his or their regularly employed agent or employee from appearing where such agent was regularly employed on a salary basis. (Code of Virginia 3426-A). An amendment of 1930 provided that if it appeared that any civil warrant issued at the instance of or on behalf of any person prohibited from representing such claim before a Justice, it should be the duty of the Justice to forthwith dismiss such warrant at the cost of the plaintiff.

About two years ago, Sam A. Pusey of the Pusey Adjustment Co. at Richmond, Virginia, had a civil warrant issued against Marie E. Gillespie on the claim of Dr. E. C. Bryce. A motion was made to dismiss the case and same was allowed.

The case was then appealed to the Law and Equity Court of Richmond. This Court affirmed the judgment of the Civil Justice Court. A writ of error was granted to the Supreme Court of Appeals of Virginia where the case is now pending.

In 1927 the Legislature of Alabama amended Section 6248 of the Alabama Code, which theretofore merely provided that only persons regularly licensed should have authority to practice law and wrote into the section a definition of the practice of law. Subdivision D reads as follows: Whoever "as a vocation enforces, secures, settles, adjusts or compromises, defaulted, controverted or disputed accounts, claims or demands between persons with neither of whom he is in privity or in the relation of employer and employee in the ordinary sense, is practicing law".

In Kendrick v. State, 218 Alabama 277, the Supreme Court of Alabama passed upon the constitutionality of the Act. Kendrick, who operated a collection agency, had been arrested for practicing law. He was convicted in the Circuit Court. The Court of Appeals affirmed his conviction in a per curiam opinion reported in 120 Southern 140 and the case went to the Supreme Court. It held that the act was unconstitutional insofar as it prohibited anyone but licensed attorneys from collecting claims because the act violated the Alabama Constitution which prohibited a statute from containing more than one subject, which must be clearly expressed in its title.

In the opinion Mr. Justice Sayre said:

"To engage in the business of collecting claims by demand or negotiation out of court is not to practice law."

It was soon discovered that the case had been decided without any brief being submitted by the State. An effort was then made to have the Court restore the case to the docket, so that the Bar might have an opportunity to present the matter. It was suggested that the Attorney General make application to the Court of Appeals for a rehearing. This was done. However, the petition was denied. Application was then made to the Supreme Court for a writ of certiorari. The Court however, in a per curiam opinion reported in 120 Southern 144 denied the writ.

An Act, regulating and defining the practice of law in the State of Alabama was approved July 20, 1931. Subdivision D was the same as that in the former act. The validity of this Act was upheld in Berk v. State ex rel. Thompson, 255 Alabama ....., 142 Southern 832, which was decided by the Supreme Court of Alabama on May 26, 1932. The petition alleged that the defendant was engaged in the business of conducting a commercial collection agency as a vocation in which he was holding himself out to the public as being ready for a consideration to represent out of court anyone in the adjustment, collection or compromise of any defaulted, controverted or disputed account, claim or demand which such person might have against anyone else and that whenever in his judgment it was necessary he turned it over to his attorney for prosecution in court. It was further alleged that he threatened to institute suit and that upon the notes which were handled by him, he made a charge for services rendered. A demurrer to the petition was overruled. The lower court then ordered that the defendant be excluded from the practice of law until he became regularly licensed.

In its opinion the Supreme Court said that it had been the usual business of a lawyer, for the past hundred years in this state, to engage in office practice as well as in cases needed in and about the collection and settlement of claims and demands. The Court held that the acts recited in the petition constituted the practice of law as defined in the statute. It further said in the opinion that the act was a valid enactment under the police power, and offended neither state nor Federal constitution, was not a usurpation of judicial power and neither denied to citizens equal civil rights, nor granted special privileges and immunities. The judgment of exclusion and prohibition was affirmed.

In Hudson Valley Board of Trade, Inc. v. Fraser P. Price, which was decided by the City Court of White Plains, New York, on October 22, 1931, the plaintiff brought suit on a claim that had been assigned to it by Frank H. Knight. This claim had been solicited by the plaintiff for the purpose of bringing suit thereon. Such solicitation was prohibited by Section 280 of the Penal Law. The Court held that the plaintiff could not recover and dismissed the complaint.

In Retail Credit Men's Association v. R. E. Callahan, Judge Ida May Adams of the Municipal Court of Los Angeles in September, 1931, held that a collection agency that sued on assigned claims was engaged in the illegal practice of law.

The legality of an assignment depends upon whether or not it was for a lawful purpose. If the assignment is for the purpose of enabling the assignee to practice law when he is not licensed, the assignment is illegal and the defendant may raise the point in his answer.

Whenever the matter of the legal purpose of the assignment has been properly raised, the Appellate Courts have uniformly held that it was a proper defense, and that if the assignment was in violation of the law as regards the right to practice law, the action could not be maintained. (Bulkeley v. Bank of California, 68 California 80; Tuller v. Arnild, 98 California 522; Koepple v. Morrison, 84 California Appeals 137).

It is our duty to protect the public from the evil effects of lay encroachments. The responsibility is our own. If the independence and integrity of this great profession is to be maintained, it is imperative that the members of the local bar associations throughout the entire United States assume this responsibility and take such action as may be necessary. Contempt, Injunction and Quo Warranto proceedings have been very effective. Such remedies should be pursued courageously.

However, this problem will never be solved entirely by the institution of legal proceedings against those who persist in such practices. It has been decided that any member of the bar who assists a corporation to practice law or render legal services is subject to discipline by the Supreme Court. (In re Otterness, 181 Minnesota 254, 232 North Western 318). He may even be deprived of his right to practice. Hence, if we will proceed against the members of the bar who participate in such practices, we will strike at the principal cause of lay encroachments. Such practices will then largely cease and we will have rendered a great service to the public and the profession.

NOTE: A third and final article on the above subject had been prepared by Roy O. Samson, of the Denver Bar, covering the cases referred to in Mr. Snively's statement, which is printed in lieu thereof.

It is Mr. Samson's opinion that the two previous articles in Dicta, together with the foregoing, conclusively establish:

1. That the power of a Supreme Court to regulate and control the practice of law is inherent and plenary and that any legislation on the subject should be construed as in aid, and not restrictive, of the power of the Court.

2. That a corporation cannot practice law, nor can a layman-assignee.

3. That a corporation is engaged in the practice of law when it employs a lawyer and pays him a salary to conduct the corporation's alleged law department for the benefit of its members or clients.

4. That the license to practice of a member of the bar is such a property right, or franchise, as will permit permanent injunction to issue in its protection.

BAR ASSOCIATION MEMBERSHIP

The bulletin of the New York State Bar Association devotes an entire back page to an appeal to the members of the Association for new members.

The statement is made that only about one-sixth of the lawyers of New York are members of the Association.

DICTA wonders how many of the non-members of the Denver Bar Association are potential members and feels that with a little publicity and pressure the membership roll of the Denver Bar Association can be materially increased.

JUDGE HENRY BRAY

Dicta notes the passing on to the Great Beyond of Judge Henry Bray. He served our community as a judge of various courts for many years. The bar has lost another of its pioneers.

Recent statistics formulated concerning repeaters at bar examinations are interesting. In Colorado at the last examinations, 62 candidates presented themselves. Of this number 7 were repeaters. Of the 28 who successfully completed the examinations, not one was a repeater. The 7 repeaters were again unsuccessful.